

**1. Applicant's Name:**

- a. **Application Date:** 14 December 2023
- b. **Date Received:** 14 December 2023
- c. **Counsel:** None

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is Under Other than Honorable Conditions. The applicant requests an upgrade to Honorable.

b. The applicant seeks relief contending, their characterization for service between 19 January 2011 – 18 January 2014 was downgraded to Under Other than Honorable Conditions, when it was Honorable as they reenlisted, and this was the only reason that term ended. The characterization of service for 19 January 2014 – March 2016 was downgraded to a dishonorable and their DD Form 214 (Certificate of Release or Discharge from Active Duty) shows that it was an Under Other than Honorable Conditions.

c. **Board Type and Decision:** In a records review conducted on 11 December 2024, and by a 5-0 vote, the board denied the request upon finding the separation was both proper and equitable.

*Please see Section 9 of this document for more detail regarding the Board's decision.*

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other than Honorable Conditions

b. **Date of Discharge:** 9 March 2016

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** Pursuant to the applicant's request for voluntary discharge provision of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** NIF

(5) **Administrative Separation Board:** NIF

(6) **Separation Decision Date / Characterization:** 1 December 2015 / Under Other than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 13 March 2015 / 3 years (3rd reenlistment)

**b. Age at Enlistment / Education / GT Score:** 28 / High School Diploma / 113

**c. Highest Grade Achieved / MOS / Total Service:** E-5 (SGT) / 13M10 Multiple Launch Rocket System/High Mobility Artillery Rocket System (MLRS/HIMARS) Crewmember / 11 years, 8 months, 11 days

**d. Prior Service / Characterizations:**

**(1)** U.S. Air Force, 29 June 2004 – 30 June 2010 / Honorable

**(2)** Regular Army, 19 January 2011 – 12 March 2015 / Honorable

**e. Overseas Service / Combat Service:** Korea / None (27 June 2011 – 1 July 2012)

**f. Awards and Decorations:**

- Army Achievement Medal
- United States Air Force (USAF) Outstanding Unit Award w/Combat Distinguishing "V" Device
- Army Good Conduct Medal
- USAF Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Korea Defense Service Medal
- Noncommissioned Officer-Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- USAF Longevity Service Award
- USAF Air and Space Campaign Medal
- USAF Training Ribbon

**g. Performance Ratings:** SGT, 2 May – 7 December 2015 / Marginal; For "Leadership" they needed much improvement noting, they set the wrong example for their peers and Soldiers to follow by committing larceny of \$1000 by changing routing numbers on a money gram; put in bare minimum effort in most duties to provide purpose, direction, and motivation to their Soldiers. The rater remarked as overall performance and potential, to not recommend NCOES or promotion at this time and they were not a contributing member of the Army; to not retain and remove from positions of responsibility immediately.

**h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** On 13 March 2015, the applicant completed their third reenlistment for 3 years as a SGT, with 10 years, 11 months, and 15 days of total prior service (Army and Air Force). The Enlisted Record Brief provides in a prior enlistment they served one year in Korea (27 June 2011 – 1 July 2012). on 10 August 2015, they were flagged, Suspend Favorable Personnel Actions (FLAG), for law enforcement investigation (MA), adverse action (AA), and field-initiated involuntary separation (BA).

(2) On 23 July 2015, the applicant was interviewed by Military Police Investigations, read their rights for the charges of "larceny, fraud", provided a sworn statement, stating they participated in a focus group at Madigan Preventative Medicine Clinic, Joint Base Lewis-McChord, WA, which paid the applicant for the session. The psychologist (the victim) provided a sworn statement also, indicating the money to fund the session, purchase last-minute supplies and food/beverages, was inadvertently deposited into their personal checking account instead of the established account for this program, which was used to pay the applicant \$200. In June 2015, the applicant purportedly took the check information previously received from the study group and pasted it on an old Money Gram they had received months prior. Then the applicant photographed it and deposited the falsified \$1000 Money Gram to their bank account. The applicant reveals they have five children, was going through a divorce, and was \$42,000 in debt, which was causing a financial strain. Once the victim discovered the Money Gram was from the applicant's account on 19 July 2015, they notified the applicant's command accordingly. Further details are provided in the two statements.

(3) On 8 October 2015, the applicant was charged in violation of Article 121, UCMJ (larceny) for stealing money of a value greater than \$500.00, the property of another person, on or about 10 June 2015, at or near Joint Base Lewis-McChord, WA. The charge was preferred.

(4) On 26 October 2015, after consulting with counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulations 635-200, Chapter 10, discharge in lieu of trial by court-martial. In their request, they affirmed no one had subjected them to coercion, counsel advised them of the implications of their request, and the applicant further acknowledged they were guilty of the charge against them or a lesser one, understanding they may be discharged Under Other than Honorable Conditions, characterization of service and elected not to submit a statement on their behalf. Defense counsel endorsed their election, acknowledging the applicant was counseled on the possible effects of an Under Other than Honorable Conditions and the rights available to them.

(5) On 29 and 30 October 2015, the commander, battalion, and brigade commanders all recommended approving the voluntary discharge request and noted the applicant's cooperation in the investigation and their having remained professional and continuance of the mission. On 1 December 2015, the separation approval authority approved the discharge, with an Under Other than Honorable Conditions characterization of service and as a result, the applicant was reduced to the lowest enlisted grade.

(6) On 17 and 29 February 2016, the applicant completed their medical history, examination (MHE), and mental status evaluation (MSE) for separation at Soldier Center Medical Home and the Embedded Behavioral Health Clinic, Joint Base Lewis-McChord, WA, which indicates their medical examination qualified them for service and separation without any diagnoses or recommendations listed. Their medical history, block 29 lists the following explanations of "yes" answers:

- 12a: Resolved
- 12i: Always in pain worsens when running, right knee
- 13g: Eczema outbreaks on occasion in inner elbow both left and right
- 16e: Had echo cardiogram done 16 February 2016
- 17e: Behavioral health for anger and marital issues

(b) Their medical history, block 30a, provides the examiner's notes:

- 12a: Right shoulder pain resolved

- 12i: Right knee pain. Recommend follow up with primary care manager if worsens
- 13g: Eczema fully controlled with topical steroids
- 16e: Echo show mild Pulmonic stenosis. Recommend follow up with Transthoracic Echocardiogram (TTE) within 2-3 years
- 17e: Anger and marital issues fully resolved. Denies SI/HI.

(c) Their mental status evaluation (MSE) did not indicate a BH diagnosis; however, noted they were experiencing phase of life problems. They could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements (i.e., did not qualified for a Medical Evaluation Board IAW AR 40-501). They were psychiatrically cleared for any administrative action deemed appropriate by the command.

(7) On 2 March 2016, their separation orders were issued. A DD Form 214 reflects the applicant was discharged accordingly on 9 March 2016, with 11 years, 8 months, and 11 days of total service. They were not available to sign and have completed their first full term of service. The continuous Honorable active service remark is listed as indicated in the AR 635-8.

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** ACTS Online Application

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with this application.

7. **STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing

the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Chapter 10, Discharge in Lieu of Trial by Court Martial is applicable to members who committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general was authorized, an under other than honorable conditions discharge was considered appropriate, unless the record was so meritorious it would warrant an honorable. After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable conditions. The following will accompany the request for discharge:

- A copy of the court-martial Charge Sheet (DD Form 458)
- Report of medical examination and mental status evaluation, if conducted
- A complete copy of all reports of investigation
- Any statement, documents, or other matter considered by the commanding officer in making their recommendation, including any information presented for consideration by the soldier or consulting counsel
- A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

(5) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

f. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedures regarding separation documents, it states in the preparation of the DD Form 214 for soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter in item 18 (Remarks) "Continuous Honorable Active Service From (first day of service which DD Form 214 was not issued) until (date before commencement of current enlistment).

**g.** Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

**(1)** RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

**(2)** RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

**(3)** RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**h.** Manual for Courts-Martial (2012 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 121 (larceny, of property other than military property of a value of more than \$500.00) states in the subparagraph, the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years.

**8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

**a.** The applicant requests an upgrade to Honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

**b.** The available evidence provides the applicant completed a third reenlistment as a SGT, with over 10 years prior active duty service, served for five months prior to having been flagged for law enforcement investigation, adverse action, and involuntary separation. A charge of Article 121, UCMJ (larceny, of other than military property, greater than \$500) for stealing \$1000 from the victim, was preferred to a special court-martial.

**(1)** They requested to be voluntarily discharged in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10. There is no indication of an election to submit a statement on their behalf and defense counsel counseled them on the possible effects of their separation with an Under Other than Honorable Conditions and the rights available to them.

**(2)** The applicant completed separation exams and was qualified for separation with no diagnoses or recommendations, other than phase of life problem. They served 11 months and 27 days of their 3 year contractual obligation.

(3) The remarks item of their DD Form 214 does provide the required honorable service statement regarding their first term of service; however, it should be from the first day of service which DD Form 214 was not issued (19 January 2011), until the date before commencement of current enlistment (12 March 2015).

c. Army Regulation 635-200 states Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a soldier who is discharge in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

#### 9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **No.** The Board's Medical Advisor reviewed DoD, and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s): The applicant seeks relief contending, their characterization for service between 19 January 2011 – 18 January 2014 was downgraded to Under Other than Honorable Conditions, when it was Honorable as they reenlisted, and this was the only reason that term ended. The characterization of service for 19 January 2014 – March 2016 was downgraded to a dishonorable and their DD Form 214 (Certificate of Release or Discharge from Active Duty) shows that it was an Under Other than Honorable Conditions. Upon review, the board concluded that the Command's actions were in compliance with Chapter 10 of Army Regulation 635-200 throughout the processing of this case. The applicant chose to be discharged from service rather than face a court-martial. This request was subsequently approved by the appropriate convening authority.

c. The board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contentions that the discharge was improper or inequitable.



**d. Rationale for Decision:**

(1) The board voted not to change the applicant's original characterization of service, finding no mitigating circumstances to justify reconsidering the offenses of larceny and fraud. It was noted that the applicant had voluntarily requested discharge under the provisions of Army Regulation 635-200, Chapter 10, as an alternative to facing trial by court-martial. The board determined that the discharge process adhered to both procedural and substantive requirements as outlined in the relevant regulations. Furthermore, the decision fell within the separation authority's discretionary powers, and the applicant was afforded full administrative due process throughout the proceedings.

(2) The board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order:** No
- b. Change Characterization to:** No Change
- c. Change Reason / SPD code to:** No Change
- d. Change RE Code to:** No Change
- e. Change Authority to:** No Change

**Authenticating Official:**

3/19/2025

**X**

Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

**Legend:**

AWOL – Absent Without Leave  
AMHRR – Army Military Human  
Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation  
Division  
ELS – Entry Level Status  
FG – Field Grade Article 15

GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma  
N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral  
Health (Issues)  
OMPF – Official Military  
Personnel File  
PTSD – Post-Traumatic Stress  
Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program  
Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized  
Discharge  
UOTHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs